

1 CHRISTOPHER CHIOU  
2 Acting United States Attorney  
3 District of Nevada  
4 Nevada Bar #14853  
5 LISA CARTIER-GIROUX  
6 Lisa.Cartier-Giroux@usdoj.gov  
7 KIMBERLY SOKOLICH  
8 Kimberly.Sokolich@usdoj.gov  
9 Assistant United States Attorney  
10 501 Las Vegas Blvd. South, Suite 1100  
11 Las Vegas, Nevada 89101  
12 (702) 388-6336

13 Representing the United States of America

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15 **UNITED STATES DISTRICT COURT**  
16 **DISTRICT OF NEVADA**

17 UNITED STATES OF AMERICA, ) Case No. 2:21-cr-00073-JCM-EJY  
18 Plaintiff, )  
19 vs. ) **Government's Response to Defendant's  
20 Kelton Simon, ) Sentencing Memorandum (ECF No. 33)**  
21 )  
22 Defendant. )  
23 )  
24 )

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25 Certification: This response is timely filed.

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27 **I. Introduction**

28 The United States of America submits this brief in response to Defendant Kelton  
29 Simon's Sentencing Memorandum (ECF No. 33). Simon's sentencing hearing is currently  
30 scheduled for July 7, 2021.

31 In summary, the government recommends that the Court sentence Simon at the low  
32 end of the advisory Guideline range as determined by the Court. The government further  
33 recommends that defendant be subject to home confinement, provided at least one month is  
34 satisfied by imprisonment. Finally, the government recommends that restitution in the  
35 amount of \$71,335.72 be ordered joint and severally liable with the five similarly charged

1 defendants. This is consistent with the government's position in the plea agreement (ECF  
 2 No. 30) and such a sentence is sufficient but not greater than necessary to achieve the  
 3 sentencing goals under 18 U.S.C. §3553(a).

4 **II. Relevant Facts and Procedural Background**

5 On May 30, 2020, a large crowd gathered in front of the Foley Federal Building,  
 6 located at 333 South Las Vegas Boulevard. PSR ¶10. Several individuals, including Simon,  
 7 broke apart from the crowd and began to damage the building. *Id.* Windows were  
 8 shattered, the walls of the building were spray painted with obscenities and anti-law  
 9 enforcement graffiti, signs were destroyed, and the landscaping was lit on fire. *Id.* Simon,  
 10 along with others, went to the east entrance of the building and tried to break the windows  
 11 in an attempt to make entry. *Id.* ¶ 14. An on-duty Federal Protective Service Security  
 12 Officer, T.W., who was stationed inside, witnessed the damage and attempted break-in. *Id.*  
 13 ¶ 11. T.W. stated the crowd outside could see him inside the lobby and they were chanting,  
 14 "Get him! Get the Cop!" *Id.* T.W. was in fear of the crowd breaking through the windows  
 15 and the potential actions against his person if the crowd successfully made entry. *Id.*  
 16 Ultimately, police units arrived, and the crowd was dispersed. *Id.*



24 "Foley Federal Building United States Courthouse" sign with letters torn off and graffiti.



## Damage to front of Foley Federal Building

On April 7, 2021, Simon pleaded guilty to Depredation Against Property of the United States, in violation of 18 U.S.C. §§ 1361 and 2. ECF No. 31.

### III. Sentencing

16 In conformity with the plea agreement, the government respectfully requests that the  
17 Court sentence Simon to the low end of the Guideline range calculated by the Court. If the  
18 Court accepts U.S. Probation's Office's current calculation of a Total Offense Level of 10  
19 and a Criminal History Category of II, a sentence at the low end of the resulting Guidelines  
20 range would be eight months imprisonment. PSR at 21.

21 The government further recommends that U.S.S.G. §5C1.1(c)(2) should be applied  
22 to Simon's sentence so that he may be subject to home confinement according to the  
23 schedule in 5C.1.(e)(3), provided at least one month is satisfied by imprisonment. The  
24 government believes this sentence would be sufficient, but not greater than necessary, to

1 achieve the sentencing goals of 18 U.S.C. §3553(a). When Simon joined with others on May  
2 30, 2020, he purposefully destroyed federal property. PSR ¶ 89. His actions and willful  
3 participation promoted violence, vandalism, and destruction and he should be held  
4 accountable for this unlawful behavior. The requested sentence reflects the seriousness of  
5 the offense, as well as the need to promote respect for the law, deter future criminal conduct,  
6 and provide just punishment.

7 **IV. Restitution**

8 The damage to the Foley Federal Building was significant, totaling \$71,335.52. PSR  
9 ¶ 16. Pursuant to the plea agreement, the government recommends that the Court order the  
10 full amount of restitution, to be imposed jointly and severally liable with the defendants in:  
11 *United States v. Wallace*, 2:20-cr-289-RFB-VCF; *United States v. Kostan*, 2:21-cr-81-APG-DJA;  
12 *United States v. Lewis*, 2:21-cr-00044-JAD-DJA; *United States v. Avalos*, 2:21-cr-92-JAD-VCF;  
13 and *United States v. Cherry*, 2:21-mj-139-DJA. Restitution is payable to:

14 General Services Administration (GSA)  
15 Attn: Herb Orrell  
16 333 S. Las Vegas Blvd, #5501  
17 Las Vegas, NV 89101

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## V. Conclusion

The government respectfully requests that this Honorable Court sentence Simon to the low end of the Guidelines, allowing Simon to be subject to home confinement, so long as one month is satisfied by imprisonment.

DATED this 1st day of July 2021.

Respectfully submitted,

CHRISTOPHER CHIOU  
Acting United States Attorney

/s/ Lisa Cartier-Giroux  
LISA CARTIER-GIROUX  
Assistant United States Attorney

/s/ Kimberly Sokolich  
KIMBERLY SOKOLICH  
Assistant United States Attorney